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December 16, 2008

### AGENDA ITEM 3

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION  
COMMITTEE**

- I. SUBJECT:** State Legislative Proposal: Minor Policy and  
Technical Amendments to Government Code
- II. PROGRAM:** Legislation
- III. RECOMMENDATION:** Staff recommends that the Board **sponsor**  
legislation to make minor policy and technical  
amendments to Government Code provisions  
administered by CalPERS.
- IV. ANALYSIS:**

This proposal would make several minor policy and technical amendments to various sections of the Government Code administered by CalPERS. Staff has identified provisions requiring legislative change to ensure that the statutes administered by CalPERS are as clear and as unambiguous as possible.

Specifically, this proposal would address the following issues:

**Death Benefit Overpayment Recovery**

This proposal would provide a ten-year recovery period from the time of discovery for overpayments due to the death of a retired member or beneficiary. Currently, CalPERS is allowed three years to recover these types of overpayments. When this time period is insufficient for recovery, CalPERS is forced to write off such overpayments.

Upon the death of a payee, if there is no beneficiary eligible for a continuing monthly benefit, the death must be reported to CalPERS and the allowance stopped. If CalPERS is not informed immediately of a payee's death, the payments continue until CalPERS is notified. In many cases CalPERS identifies a payee death through a third-party vendor. This process can take some time, and multiple benefit payments may have been made prior to identifying these unreported deaths and stopping payments.

Collecting death benefit overpayments is complicated by the fact that approximately 88 percent of current payees receive their checks via direct deposit. In these situations the monthly allowance continues to go into the payee's bank account until the death is reported or discovered through the third-party vendor. Staff must identify the person or persons who had access to the payee's bank account to determine who is responsible to reimburse the overpayments. In 2004 the Board sponsored state legislation that requires financial institutions to disclose the names and addresses of account holders who receive death benefit overpayments. Unfortunately, many banks still refuse to release information regarding who had access to the account after the payee's death due to federal law. This necessitates obtaining the information via the subpoena process, which can be very lengthy, leaving little time for CalPERS to actually pursue recovery.

### **Actuarial Rate of Interest on Unpaid Amounts**

Current law permits the Board to charge interest on unpaid amounts at a rate approximating the average rate received on moneys then being invested. This proposal would provide that the interest to be charged on unpaid amounts is the actuarial interest rate rather than the average rate received on moneys currently being invested. While CalPERS currently is permitted to charge interest on late payments it has not always done so due to difficulty in applying the specified interest rate and limitations of our computer system. This proposed change, along with implementation of the new myCalPERS system, will remedy the problem.

### **Non-Member Retirement Dates**

This proposal would allow CalPERS to grant a retirement effective date earlier than the first day of the month in which the nonmember's application is received if the application is received within nine months of the requested effective date.

Non-members are the former spouses of CalPERS members who have been awarded a community property account. Current law provides that a non-member retirement application becomes effective no earlier than the first day of the month in which the application is received by CalPERS. The only exception currently provided by law is for cases in which it can be demonstrated that the non-member was incompetent to act on his or her behalf continuously from the date of dissolution or legal separation.

In the case of CalPERS members who apply for disability or service retirement, an application can be made retroactive as long as it is received within nine months of the requested effective date. This disparity between the processes for members and nonmembers creates a benefit inequity for the nonmembers, as well as creating additional possibilities for misunderstandings and administrative appeals during the retirement process.

### **Partial Service Retirement**

Partial Service Retirement is a program administered by Department of Personnel Administration, which began in 1983 as a way to retain seasoned employees who otherwise planned to retire on a service retirement. The program allows employees to reduce their hours while drawing both a paycheck and a partial retirement allowance.

The Partial Service Retirement Program has been modified over its lifespan. An earlier modification established the minimum age for participation at 50 with 20 years of service or the necessary years of service where the sum of the age plus service equaled or exceeded 65. In 2004, the Board adopted a regulation that defined "normal retirement age" in order to comply with prior IRS rulings. As a result, the qualifying age of 50 was replaced with "normal retirement age". At that time, the 20 year requirement should have been deleted. Therefore, this proposal would delete the 20 years of service requirement to participate in the Partial Service Retirement Program.

#### **Other Technical Changes**

This proposal also makes other technical wording and grammatical corrections and corrects or deletes inaccurate or obsolete code section references.

#### **V. STRATEGIC PLAN:**

This proposal supports Strategic Goal III to develop, design, and administer benefit programs and business processes that are innovative, effective, efficient, and valued by our members, employers, and stakeholders.

#### **VI. RESULTS/COSTS:**

This proposal will clarify application and administration of the statutes affecting the programs and benefits administered by CalPERS. There should be no costs as a result of these proposals, and some may result in cost savings.

Members of the Benefits and Program Administration Committee  
December 16, 2008

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